

Nothing like before

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I'm sure you've read enough musing reflections on how radically the world has changed since the Corona pandemic broke out by now to satisfy your needs for the rest of the decade. Don't worry, this won't be another one. Much as I understand the urge to historicize the uncanny present, I don't see what I could say besides stating the obvious, i.e. that the before and the after are in some way more distinctly separated from each other now than usually. That's how it is with historical times: To perceive them as such, they need to be in the past.

In the last weeks, there have been some phrases on Verfassungsblog which have assumed a life of their own in the German public debate: [Hans-Michael Heinig's](#) "fascist-hysterical hygiene state", for example, or [Christoph Möllers'](#) "most massive collective fundamental rights encroachment in the history of the Federal Republic of Germany". Heinig's observation was a warning, though, not a diagnosis. Möllers' diagnosis, on the other hand, was merely pointing to the fact that this massive fundamental rights encroachment must be preceded and followed by equally massive parliamentary and judicial efforts to justify it. So, what it actually *is* that is happening to us right now – no-one can tell for the time being, particularly since the outcome depends so much on ourselves.

Crises have a way to synchronize society: we are all at the same time in the same lockdown, all prevented from doing the same things, while all the usual background synchronizers, the spring weather in the street cafés, religious services, music heard or made together¹⁾ I owe this thought to an essay by Sandeep Baghwati, soon to be published in the magazine "[Positionen](#)", are mostly deactivated. This creates an illusion of state-produced harmony, which, like marching music, forces everyone listening, like it or not, into walking in lockstep. You have to follow the drums, and woe to you if you break ranks. You're peacefully sitting in park, reading your book, doing your solitary yoga routines, minding your own business, as undangerous as can be, and precisely for that reason you'll be yelled at and fined and escorted off the premises by the police before you know it.

This supposed harmony is an illusion, of course. My own luxury lockdown in rural Uckermark outside Berlin, with my little vegetable garden and my family and rather too much work than too little, is a completely different experience than that of a nurse in a residential care home or a refugee in a camp or a single mother in a two-room apartment. The whole world seems to synchronize in the shared lockdown experience, but actually it's a lot less synchronous than it might look, because resources and accordingly the chances of limiting damages are [as unequally distributed as ever](#). Politics keeps taking place, also and especially in times of crisis.

For politics to take place and for reaching collectively binding decisions by the many, despite their diverging interests, there is no need for artificial harmony under the baton of marching home and health secretaries, but for functioning procedures and

institutions, just as at any other time: international organisations that prevent states from playing destructive zero-sum games, governments that explain and justify the exercise of their power, parliaments that represent, organize and process diversity, and courts before which the many can claim their right to justification.

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This is how fundamental rights work. They are not privileges granted by the constitution for our free and undisturbed exploitation, but entitlements to justification: Ok, state, if you want to make me do or not do certain things, you'll have to justify that. You can't just walk over me. And, mind you, simply stating your authoritarian desire for harmony won't do! You'll need reasons to which you have committed yourself in your laws, in your constitution and in your international treaties. And if you don't have any, for example for obliging me to carry an [ID](#) at all times, or for banning me sitting alone on a [park bench](#), or for completely taking away my right to peacefully [assemble](#), in safe distance and without any infection risk at all, to protest your policies – well, then your ban just won't stand, will it?

The hour of the constitutionalists

Nothing like before – this also applies to **Verfassungsblog**. Our job has changed radically in the last three weeks, not so much qualitatively as quantitatively, our reach of audience, our range of topics, the number of posts we line up, edit and publish every day. We have received an overwhelming amount of recognition and support these weeks, and we cannot thank you enough for that. But the demands on us are growing even faster. At the moment we are two full-time editors, all others have day jobs or volunteer. We can't go on like this. We'll have to hire up if we want to get the job done.

Therefore: if you are not yet a supporter of Verfassungsblog, then please become one. Preferably with a volunteer subscription on [Steady](#), so that we can plan. Or else by a one-off payment to paypal@verfassungsblog.de or by bank transfer (IBAN DE41 1001 0010 0923 7441 03, BIC PBNKDEFF).

You may have noticed some changes we made: for example our daily crisis podcast **Corona Constitutional**, which has been appearing early in the evening every day since last week (except yesterday, when a technical glitch ruined the entire episode to our great dismay). Hopefully, you enjoy this addition as much as we do! It can be heard on all the usual platforms and also [here](#).

Starting next week we will also send out a daily digest about blog posts of the day to our newsletter subscribers. I used to provide a weekly overview in this editorial, but that doesn't work with the number of articles we are posting these days. So, instead, you will receive a daily overview in your mailbox every weekday evening, in addition to the weekly editorial. We hope you enjoy it.

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Prof. Dr. Matthias Bäcker

Stellenausschreibung wissenschaftliche/r Mitarbeiter/in (m/w/d)

Johannes Gutenberg-Universität Mainz

Am Lehrstuhl für Öffentliches Recht und Informationsrecht, insbes. Datenschutzrecht an der Johannes Gutenberg-Universität Mainz (Prof. Dr. Matthias Bäcker) ist zum 01.07.2020 die **Stelle (75%) einer/eines wissenschaftlichen Mitarbeiters/in (m/w/d)** (EG 13 TV-L) befristet für die Dauer von drei Jahren zu besetzen.

Vorgesehen ist die Mitarbeit an einem praxisorientierten interdisziplinären Verbundforschungsprojekt zum sicherheitsbehördlichen Einsatz von Methoden der **Künstlichen Intelligenz**. Zur [Ausschreibung](#).

Our current online symposium on the subject of "Covid 19 and States of Emergency", running since last week, is also a completely new experience. This symposium, curated by Joelle Grogan, is growing into a collection of material of almost encyclopedic wealth. At the moment, we expect or have published reports from 60 countries on the respective emergency regime and its strengths and weaknesses, and counting.

As I said, I won't give you an exhaustive overview of all we have posted, but I would like to highlight a few of my personal favourites:

- [ALEXANDER SOMEK](#)'s elegant reckoning with the Austrian Chancellor Sebastian Kurz and his attitude that this is no time for "juridical sophistry", especially since his measures would have already been revoked by the time the Austrian Constitutional Court decides on them. "Governments", Somek writes, "throughout the world have currently taken freedom of assembly away from us (...). But the constitutional guarantee of this right even under adverse conditions is, remarkably, an important condition for sustaining the constitution as law vis-à-vis the executive branch. We need to reclaim this freedom in order to make sure that juridical sophistry remains a pain in the neck of our political leaders."
- [RALUCA BEJAN](#)'s unsparing insistence that we complacent Germans acknowledge the risk of infection we unwittingly impose on Romanian seasonal workers whom we fly in to harvest our beloved asparagus for us.
- [KIM LANE SCHEPPELE](#)'s assessment of US President Trump's pandemic policy, which aims not so much at authoritarian harmony but at a libertarian *homo homini lupus* dystopia of terrified, heavily armed, deeply distrust- and resentful militia men.
- Speaking of the hour of the constitutionalists: How much constitutional law has changed in the last ten years can also be seen on Verfassungsblog, according to [BART CAIEPO](#) and [FEDERICO BENETTI](#). It is not so long ago that constitutional law in Europe consisted essentially of compiling and interpreting constitutional court rulings. In the authors' view, the extent to which this discipline has now developed into a source of knowledge of the normative

foundations of politics can be quantitatively demonstrated by the articles that Verfassungsblog has published since 2009. I guess we are becoming the object of scientific research ourselves now, aren't we? This, of course, makes us doubly proud.

Alright, then. All the best to you, health, calm and solidarity, and don't let anyone tell you that you have to put up with anything unjustified!

Max Steinbeis

References

- 1. I owe this thought to an essay by Sandeep Baghwati, soon to be published in the magazine "Positionen"

